

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FRED CHISOM,

Plaintiff,

vs.

LT. GLEASON and WASHINGTON
STATE PENITENTIARY,

Defendant.

NO. CV-05-5081-RHW

ORDER DENYING LEAVE TO PROCEED *IN*
FORMA PAUPERIS AND DISMISSING
ACTION

By Order filed September 26, 2005, the Court directed Plaintiff to pay \$250.00 for this action, as a prisoner may not proceed without prepayment of the filing fee unless he "is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). The Court found Plaintiff's allegations of unspecified threats by Defendant Gleason on unspecified dates, the allegedly racial gestures of one of Defendant Gleason's colleagues, and the infraction of Plaintiff for stating to classification officials that Plaintiff would "put a noose around their kids neck," failed to satisfy the "imminent danger" exception.

Plaintiff, a prisoner at the Washington State Penitentiary, is

1 proceeding *pro se*. He does not contest the finding¹ that he has filed
2 three or more actions that were frivolous, malicious or that failed to
3 state a claim within the meaning of 28 U.S.C. § 1915(g).

4 Rather, on September 30, 2005, Plaintiff filed a "Motion Appeal
5 Notice: Imminent Danger Emergency Relief Amended Information," which
6 he noted for hearing on November 3, 2005. Plaintiff claims on an
7 unspecified date, unidentified escorting officers slammed him "up
8 against a wall and busted [his] mouth for no significant reason on
9 [his] way to a [sic] attorney visit which [he] had to decline."
10 Plaintiff also repeats his allegations regarding unspecified threats
11 by Defendant Gleason and racial gestures by a colleague.

12 The fact force was used during an escort on an unspecified date
13 without any reference to the circumstances or Plaintiff's compliance,
14 does not satisfy the "imminent danger" exception. To meet his burden
15 under § 1915(g), the inmate must provide "specific fact allegations of
16 ongoing serious physical injury, or a pattern of misconduct evidencing
17 the likelihood of imminent serious physical injury." *Martin v.*
18 *Shelton*, 319 F.3d 1048, 1050 (8th Cir. 2003). Vague or conclusory
19 allegations of harm are insufficient. *White v. Colorado*, 157 F.3d
20 1226, 1231-32 (10th Cir. 1998). Furthermore, "[b]y using the term
21

22
23 Judicial notice may be taken of court records. *Valerio v. Boise*
24 *Cascade Corp.*, 80 F.R.D. 626, 635 n.1 (N.D. Cal. 1978), *aff'd*, 645
25 F.2d 699 (9th Cir. 1981). See also *Mir v. Little Company of Mary*
26 *Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988)(court may take judicial
27 notice of its own files).

1 "imminent," Congress indicated that it wanted to include a safety
2 valve for the "three strikes" rule to prevent impending harms, not
3 those harms that had already occurred." *Abdul-Akbar v. McKelvie*, 239
4 F.3d 307, 315 (3rd Cir. 2001). Plaintiff has listed only one
5 incident in which force was used, and it is not clear from his
6 allegations whether such force was excessive under the circumstances.

7 Plaintiff asserts "either these police are going to kill me or
8 I'm going to kill one of them, its inevitable." To the extent
9 Plaintiff participates in the creation of a volatile situation, his
10 arguments to the Court are not well taken. As presented, Plaintiff
11 has failed to demonstrate "imminent danger of serious physical
12 injury."

13 Accordingly, **IT IS ORDERED:**

14 1. Plaintiff's application to proceed *in forma pauperis* (Ct.
15 Rec. 4) is **DENIED**.

16 2. Plaintiff's Motion Appeal Notice: Imminent Danger Emergency
17 Relief Amended Information (Ct. Rec. 8) is **DENIED**.

18 3. In light of Mr. Chisom's failure to pay the filing fee, **IT IS**
19 **FURTHER ORDERED** the action is **DISMISSED without prejudice**.

20 **IT IS SO ORDERED.** The District Court Executive is directed to
21 enter this Order, enter judgment, forward a copy to Plaintiff, and
22 close the file.

23 **DATED** this 28th day of October 2005.

24
25 s/ ROBERT H. WHALEY

26 CHIEF UNITED STATES DISTRICT JUDGE

27 ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS*
28 AND DISMISSING ACTION -- 3